



PLANNING COMMISSION AGENDA REPORT

II.1

MEETING DATE: JUNE 13, 2005

ITEM NUMBER:

SUBJECT: APPEAL OF MINOR CONDITIONAL USE PERMIT ZA-05-15
2790 HARBOR BOULEVARD, SUITE 103

DATE: JUNE 2, 2005

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714)754-5136

DESCRIPTION

Appeal of Zoning Administrator's denial of a minor conditional use permit to deviate from shared parking requirements, to allow a massage establishment to occupy a 1,100 square foot suite.

APPELLANT/APPLICANT

Yijie Shen, the project applicant, filed the appeal request. Ms. Shen is representing the property owner, May Lee Tong of Tri-Harmony Property, LLC.

RECOMMENDATION

Uphold Zoning Administrator's denial of the request by adoption of Planning Commission resolution.


WENDY SHIH
Associate Planner


KIMBERLY BRANDT, AICP
Acting Asst. Development Services Director

BACKGROUND

The subject property is located on the southeast corner of Adams Avenue and Harbor Boulevard. It contains an approximately 27,600 square foot, three-story commercial building. The applicant requests a deviation from shared parking requirements to occupy a 1,100 square foot suite on the first floor, formerly occupied by a tattoo parlor approved by the Planning Commission under PA-04-01, for a massage establishment (foot massage, reflexology, and chair massage). On April 21, 2005, the Zoning Administrator denied the applicant's request because there are no special operational characteristics to justify approval of the parking deviation on a property that contains a nonconforming development. The applicant, Yijie Shen, appealed the decision on April 28, 2005, because she feels that there is adequate on-site parking to accommodate her business.

ANALYSIS

A minor conditional use permit is required to deviate from shared parking requirements because a massage establishment requires a higher parking ratio (6 spaces per 1,000 square feet) than the previous use (4 spaces per 1,000 square feet), and a massage establishment requires more parking than provided on the property (138 spaces required with massage establishment per current parking standards; 73 spaces required per Section 13-204 Nonconforming Provisions; 71 spaces existing).

Current Parking Req.	Nonconforming Parking Req.	Existing Parking
138	73	71

The existing building is legal nonconforming because it does not meet current parking standards. Per Zoning Code Section 13-204 (Nonconforming Provisions), an existing use may not be replaced with a use requiring more parking unless the additional parking required for the new use is provided. A massage establishment requires additional 2 spaces, which cannot be provided on the property.

Although there is a shared parking agreement, as stated by the applicant, between the subject property and adjacent commercial strip center properties, the whole center is still legal nonconforming with regards to parking (approximately 100 spaces less than required by Code). Therefore, there is not excess parking available to allocate to the subject site. Additionally, since all developments are nonconforming with regard to parking and the entire strip center is approximately 800 feet in length, parking has been reviewed in sections based on proximity to the businesses. Although the applicant's parking survey shows available parking spaces, it does not include evenings or weekends. The mix of businesses permitted by right within the building can change and these new uses could generate a different parking mix that may use more of the available parking. There are several other uses in the building that require more parking than provided, such as the dance studio, but were permitted because they operate at hours offset with other tenants.

As mentioned in the Zoning Administrator's denial letter, there are no special operating characteristics to justify approval of the parking deviation. The applicant states that there will be no more than 2 employees and each massage session will be approximately 20 minutes per person. The applicant also anticipates a maximum of 6 clients a day. However, the 1,100 square foot suite contains three rooms, two cubicles with a 48-inch low wall, and a large open area at the front for additional chair therapy, which can accommodate more than 2 clients at a time. Since the sessions are short, the business can generate a higher turnover of clients. Based on the applicant's description of the use and the floor plan, the proposed business is not substantially different than any other massage establishment, and due to the short sessions, the business could generate additional traffic to the already nonconforming site.

ALTERNATIVES

Should Planning Commission uphold Zoning Administrator's denial of Minor Conditional Use Permit ZA-05-15, the applicant may not establish a massage business at the subject site.

Should the Planning Commission reverse the Zoning Administrator's decision and approve Minor Conditional Use Permit ZA-05-15, the applicant may establish the massage business, subject to conditions.

ENVIRONMENTAL DETERMINATION

This project is exempt from the requirements of the California Environmental Quality Act.

CONCLUSION

The Zoning Administrator determined that there are no special operating characteristics to justify approval of the parking deviation on a property. Based on the applicant's description (short sessions for foot massage, chair therapy and reflexology) and the floor plan (3 rooms, 2 cubicles, and open therapy area), the business could generate additional traffic to, and greater parking demand on the already nonconforming site.

Attachments:	Appeal Application Form Description/Justification Form Zoning/Location map Aerial Photograph Plans Draft resolution including exhibits "A" and "B" Zoning Administrator's approval letter Correspondence from Affected Parties
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cc: Deputy City Manager-Dev. Svs. Director
Assistant City Attorney
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

May Lee Tong
2790 Harbor Blvd., #300
Costa Mesa, CA 92626

Yijie Shen
2151 Pioneer Ave.
Fullerton, CA 92831

File: 061305ZA0515Appeal	Date: 053105	Time: 4:00p.m.
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CITY OF COSTA MESA
P.O. BOX 1200
COSTA MESA, CALIFORNIA 92626
APPLICATION FOR APPEAL OR REHEARING

FEE: \$470.00

Applicant Name Yijie Shen
Address 2790 Harbor Blvd., Suite 300
Phone 714-609-6799 Representing _____

Decision upon which appeal or rehearing is requested: (Give number of rezoning, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) minor conditional use permit ZA-05-15
2790 Harbor Blvd., Suite 103, Costa Mesa

Decision by: _____

Reason(s) for requesting appeal or rehearing:

see attached letters & approval of documentation
we only need two more parking spaces for our unit
from what we studied in the past 10 days, there
is an average of 30 spaces available on our side
of the building. It will be more than enough to
cover the 2 needed. Plus, we have shared
parking agreement with College Center Plaza.
Please review all documentation provided, and let me know
as soon as you can. Thank you very much for
all the hard work from all staff member in the
city hall.

Date: 04/28/2005 Signature: YJ Shen

For Office Use Only — Do Not Write Below This Line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

**Tri-Harmony Properties, LLC
dba Harbor Plaza
2790 Harbor Blvd., Suite 300
Costa Mesa, CA 92626**

April 26, 2005

Mr. R. Michael Robinson
Costa Mesa Zoning Administrator
Planning Division P.O. Box 1200
Costa Mesa, CA 92628-1200

RE: Conditional Use Permit ZA-05-15

Dear Mr. Robinson:

We are in receipt of your letter to us stating the various reasons for the city denying the conditional use permit for our prospective tenant Yijie Shen for a foot massage business. We are also in receipt of the letter sent to you by John Parkyn, Property Manager for the adjoining property owner, SRS College Center objecting to the approval of this conditional use permit.

We maintain and we have documentation to support the fact that absolutely no parking problem exists in either lot. We believe Mr. Parkyn is voicing his objection on a problem that existed between us a few years ago when one of our tenants, a rental car company was parking some of their rental cars in parking stalls. We were diligent in getting their cooperation to move their cars out of the lot and they have since purchased their own property on which they park their cars. The problem no longer exists because we responded to the complaints and our tenant responded to our request to remedy the problem.

The applicant has offered to have a professional parking study done at their own expense and was told it wouldn't be necessary and would not make any difference on the outcome. Mr. Parkyn's argument is that he objects because our current tenants park on their lot all day in parking spaces allocated for use of their Tenants, he neglects to mention that as many of their tenants' park in our allocated spaces as well. He also chooses to ignore the fact that we have a shared parking agreement with the owners of the adjacent property that allows this.

As you will be able to clearly see by our documentation of the statistical data and photographs of the two parking lots in question both lots have an abundance of spaces available. That is the reality. It is a complete exaggeration on the part of Mr. Parkyn that he would need to hire a full time parking lot attendant if this permit were approved. The reality is that we are talking about a difference of 2 spaces in a lot that on average is only 42.7% full (an average of 30 spaces are available). If the city will allow us to present our documentation of the statistics and photographs we can prove our point.

The applicant is going to submit an application to appeal this decision. The approval or denial should be based on the facts and not a fictitious statement made by Mr. Parkyn.

Sincerely,

May Lee Tong
Property Manager

Tri-Harmony Properties, LLC
dba Harbor Plaza
2790 Harbor Blvd. #300
Costa mesa, CA 92626

April 22, 2005

Willa Bouwens-Killeen, Senior Planner
City of Costa Mesa
Planning Department
77 Fair Drive
Costa Mesa, CA 92626

Via Facsimile: 714-754-4856

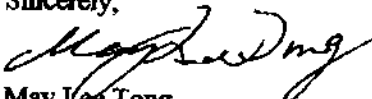
Dear Willa:

We are writing to appeal a decision that the City Planning Department made regarding the conditional use permit application filed by Yijie Kaylyn Shen for the purpose of a foot massage business at 2790 harbor Blvd. She signed a Lease Agreement with us on February 7, 2005 and since then, she has put time, effort, and money toward trying to get this permit approved.

Our prospective tenant told us on April 18, 2005 that she was notified by Wendy Lee via voice mail that she should withdraw her application because it was going to be denied due to "inadequate parking." As of that date, we have been collecting data regarding our parking lot. We found that on average, our parking lot is more than half empty. In addition to taking pictures of the parking lot at various times throughout the day, we also counted the number of empty parking spaces—we average 36.7 available parking spaces throughout the day. Moreover, we have a shared parking agreement with the strip mall adjacent to our building on the South side. That lot has an additional 54 spaces and is rarely more than 40% full—making an additional 32.4 parking spaces available. In other words, there is a total of 69 empty spaces available the majority of the time. Also, all parking spaces have time limits (2 hours and 1 hour in the adjacent lot) ensuring that parking will never be 100 percent full for more than a 1-2 hours at a time in the worst case. With the exception of Yijie's suite, our building is currently fully occupied, proving that the city's finding of "inadequate parking" is way off.

We understand that a public hearing is usually customary before a decision is made by the city. Therefore, we request that this hearing be rescheduled as soon as possible without any additional fees. For the city to deny our permit based on erroneous finding and without a hearing is unreasonable. We would hold the city responsible for any economic loss from losing this tenant.

Sincerely,


May Lee Tong
Tri-Harmony Property, LLC
dba Harbor Plaza

cc: Randy Waier Esq
Yijie Kaylyn Shen

Harbor Plaza Parking Lot

Parking Lot Data for Harbor Plaza 4/18/05 through 4/27/05

Purpose: Appeal for Conditional Use Permit ZA-05-15

Each day at various times each day in order to get a good sample we took pictures of our parking lot and the shared parking lot with College Center. College Center is the South Parking Lot and our own parking lot is the East Parking Lot. Between the hours of 9:00 am and 5:00 pm Monday through Friday our lot consisting of 71 spaces was never more than 72% full even during the most peak hours.

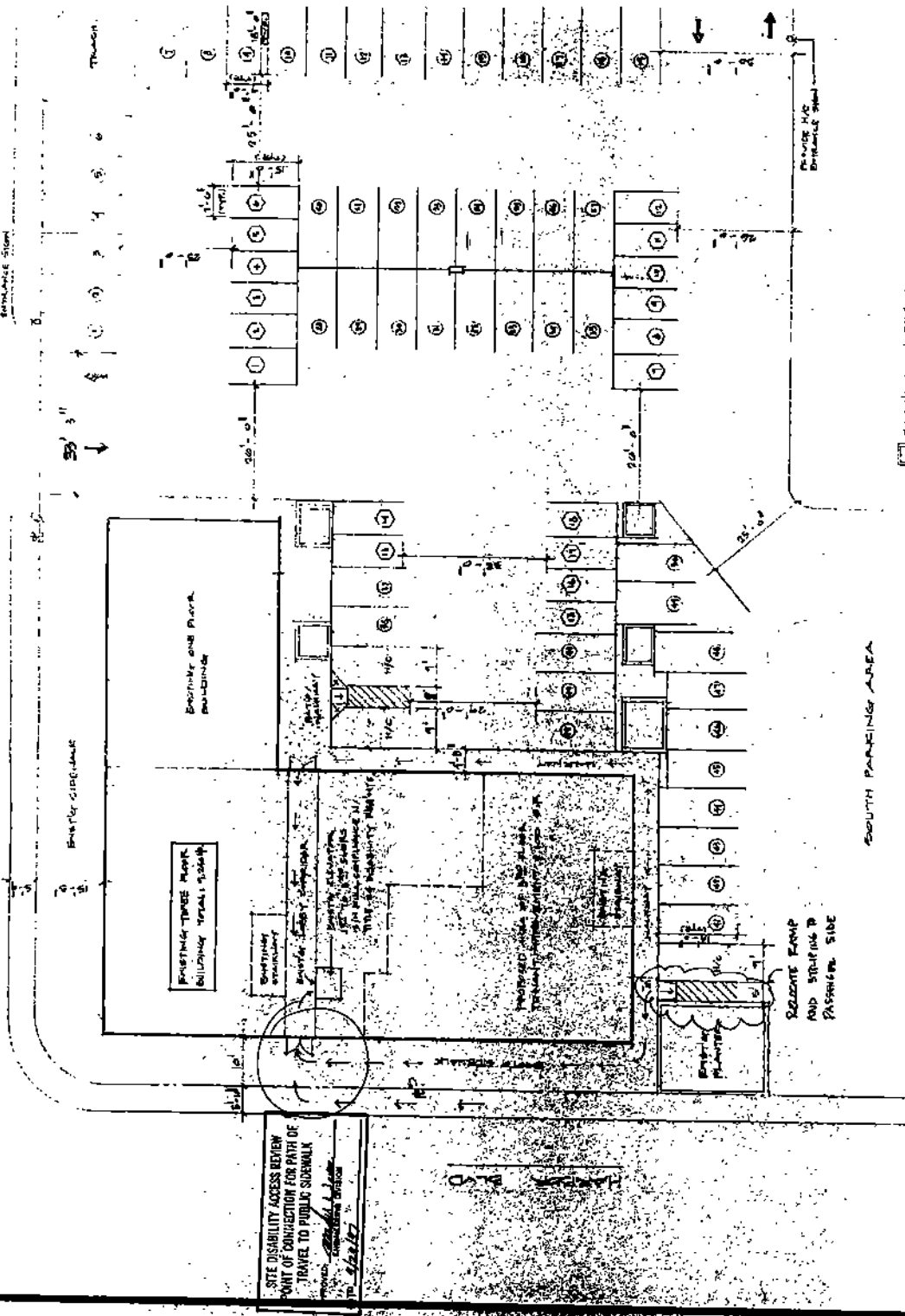
We collected the following data:

Monday 4/18/05 @ 1:00 pm 25 spaces occupied	=35%
Tuesday 4/19/05 @ 11:00 am 28 spaces occupied	=39%
Wednesday 4/20/05 @ 10:15 am 31 spaces occupied	=43%
Wednesday 4/20/05 @ 4:00 pm 51 spaces occupied	=72%
Thursday 4/21/05 @ 9:40 am 23 spaces occupied	=32%
Friday 4/22/05 @ 1:35 pm 21 spaces occupied	=30%
Monday 4/25/05 @ 3:00 pm 33 spaces occupied	=46%
Tuesday 4/26/05 @ 10:45 am 24 spaces occupied	=34%
Wednesday 4/27/05 @ 2:40 pm 47 spaces occupied	=66%

Based on this the average number of spaces on our lot occupied is only 44% of capacity. This does not even include the parking that is shared with College Center.

ADAMS BLVD.

PROPOSED
IMPROVEMENTS
TO EXISTING SIDEWALK



SITE DISABILITY ACCESS REVIEW
POINT OF CONNECTION FOR PATH OF
TRAVEL TO PUBLIC SIDEWALK
PROVIDED BY
CONSTRUCTION DIVISION
IN 1987

EXISTING PLANTERS H/CURB
PROPOSED RAMP AND STAIRS TO PATIO SIDE
SEE SHEET 10



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,
PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.**